

INCORPORATION – Presentation by Sherwood Snyder, Esq. March 18, 2008

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This is a summary of the presentation made to the RDXA membership at the regular meeting held on March 18th, 2008, at NapaGino's. Material taken directly from Sherwood's notes. This presentation was in response to the resolution approved at the January membership meeting to have a lawyer present to the club membership on the topic of incorporation.

Not-For-Profit Corporations

Corporations are creatures of the State. Some types are religious, education, business, and not-for-profit.

The purpose for incorporating is to obtain protection from liability to third parties.

Sec. 517(a) of the NYS Not-For-Profit Corporation law provides the key definition: "Members [of the corporation] shall not be personally responsible for the debts, liabilities, or obligations of the corporation."

Sec. 517(b) adds (summary): "The only obligation of members to the corporation is for unpaid dues or assessments."

Sec. 720(a) also adds: "No person serving without compensation as a director or officer of a Not-For-Profit corporation shall be liable to any person other than to such corporation."

The general purpose of these sections is to reduce the problem of unaffordable or unavailable liability insurance by shielding persons serving Not-For-Profit corporations without compensation from lawsuits.

Sec. 402 describes what is necessary to file a Certificate of incorporation with the NYS Secretary of State for approval.

- Name of the corporation – Must include words "Corporation" or "Incorporated" or "Limited" or their abbreviations.
- Purposes – Purpose for which the corporation is formed. In our case, this will be taken from the purpose section of our Constitution.
- Type of corporation – Several types, among which RDXA would be registered as type B, Social or Scientific
- County – NY county of the office of the corporation
- Duration – Duration of the existence of the corporation if other than perpetual
- Agent – Designation of NY Secretary of State as agent [for the corporation] upon whom process vs. the corporation may be served
- Signatories – Signed by a minimum of three incorporators with names and addresses

Once this is filed and a receipt is received from the Secretary of State, the corporation is in existence.

Fees

- Filing with Secretary of State -- \$75
- Expediting fee to company handling the filing of the Certificate of Incorporation -- \$50 [changes turnaround time from approximately 2 months to approximately 2 weeks]
- Corporate Minute Book -- \$90 [Binder for receipt, Certificate, By-Laws] Includes a corporate seal.

Sec. 405 defines the Organizational Meeting that must occur after the corporation commences existence. The incorporators (signers of certificate) meet to adopt By-Laws and arrange for election of Directors in accordance with said By-Laws. (Articles of Incorporation and By-Laws are the sole governing documents of the corporation. Anything in a pre-existing Constitution should be incorporated into these two documents.)

Sec. 605 defines Notice of Meetings. Whenever members are required or permitted to take any action at a meeting, written notice shall state the place, date, and hour of the meeting. A copy of the notice shall be given personally or by mail to each person entitled to vote at the meeting. Notice must be given at least ten but no more than fifty days before the date of the meeting.

Sec. 609 defines Proxies. Every member entitled to vote at a meeting may authorize another person or persons to act for him by proxy.

Sec. 611 defines Records. Every corporation shall keep correct and complete books and records and minutes of the proceedings of its members. Members shall have the right to inspect corporate books and records.

Sec. 702 Directors. The number of directors constituting the whole board shall not be less than three.

Sec. 707 Quorum. Unless fixed by the By-Laws, a majority of the Board shall constitute a quorum.

Sec. 719 Liability. Directors who vote for unauthorized distribution of cash shall be jointly and severally liable to the corporation.

This completed the description of the purposes and requirements of a corporation. The concept of Piercing the Corporate Veil was briefly discussed as being very difficult if the appropriate requirements are adhered to. In addition, anyone attempting to do so would have to involve a firm such as Nixon Peabody at around \$500 an hour. To go after a club such as ours, this was deemed unlikely.

Sherwood then entertained questions from the floor.

Question: If we are sued and deemed negligent, what are our liabilities?

Answer: If we are operating within what would be our normal course of events (activities such as Hamfest tent, Field Day), the members are protected.

Question: Are there shareholders?

Answer: Not for our type of corporation, only members.

Question: What is an "event" of the club?

Answer: An official event. Lengthy discussion ensued, but basically defined as something that we normally do, such as Hamfest, Field Day, regular meetings, dinners. If announced in newsletter, included in minutes, and open to all members, it is an official event.

Question: If an antenna-raising party is known to the club and announced as a club event, is it covered?

Answer: If an official club event as previously described, it's covered. If it's private, it's not covered.

(**Note:** Later off-line discussion suggested that this could be perceived as pushing the boundaries, and we should be careful to clearly and officially define club events and not attempt to gain the system.)

Question: If incorporation precludes the need for liability insurance, do we still need ARRL insurance?

Answer: Not needed, members are protected from liability. However, if equipment is borrowed for Field Day, for example, depending on insurance, it may provide protection of that sort.

(**Note:** Later offline discussion indicated we should still maintain our ARRL coverage for other reasons, among which are payment for litigation costs should we be sued. Remember, incorporation doesn't protect from *being* sued, it protects you from personal liability should you lose. You still have to defend yourself with a lawyer(s) regardless.)

Question: Medical protection. (I lost track of the replies to this question. From previous discussions, medical costs are typically covered by an individual's medical insurance. Incorporation or our ARRL insurance does not provide medical coverage. However, if we are later sued for liability for cause, both then provide protection.)

Question: As a corporation, would we have tax liability? Would we have to file tax returns?

Answer: Pursuing our normal course of activities, we would have no tax liability and would not have to file. If we became involved in any related business activities and received income, we would have to file. Note that being a Not-For-Profit does not automatically make you a tax-exempt organization. That is an additional and *optional* undertaking with the IRS. RDXA does not plan to pursue this due to the amount of additional overhead and the negligible benefits for our particular activities and interests. That being the case, we cannot offer potential contributors a tax deduction for any gifts.

Question: Regardless of above, would gifts be considered corporate income?

Answer: No

Question: We've seen incorporation is good for protection. Are there any downsides?

Answer: Must keep good records (minutes, treasurer's reports, etc.)

Question: Would our records be subject to outside checks, audits?

Answer: Possibly, but highly unlikely because of our type of group.

There being no other questions, the presentation concluded with sincere thanks to both Sherwood and Paul Snyder for taking the time to speak with us and clarify any concerns we may have regarding incorporation. They stated they look forward to continuing the process with us and on our behalf.

We took a break while Sherwood and Paul spoke individually to members, and then departed.

The meeting program was then presented. Immediately upon its conclusion, there was general discussion on Sherwood's presentation. There was consensus that it was a thorough presentation that seemed to answer the questions of everyone present.

A motion was made by Rick W1TY and seconded by Paul N2OPW as follows: *That the Board of Directors be directed to continue pursuing incorporation in anticipation of a positive outcome.* This was passed unanimously.

Further discussion generated consensus that pursuant to the above resolution, the board should take whatever steps are necessary to vote on incorporation at the next meeting (April). One of the key requirements per our By-Laws is notification prior to the meeting via our official means of communication, the newsletter. So it was agreed that the preceding summary of Sherwood's presentation and notice of the above resolution should be added as an addendum to the March newsletter and it be redistributed as an official notice.

You are hereby officially notified!